BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

CHARLIE MASON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-127
Case No. 71-1842

S.S.A. No.

KAISER STEEL CORPORATION
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. ONT-3898 which held that the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's account is not relieved of charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant worked in various classifications for the employer for about five and one-half years until he elected to accept an indefinite layoff on October 31, 1970. His last classification prior to the date of layoff was that of an electrician helper. He began this last type of work in April 1969. His wage at termination of employment was $3.225 an hour.

The claimant chose layoff rather than accept a transfer to a laborer's position. The laborer's position paid $2.885 an hour which would have involved a reduction in wages of 10.54 percent. The transfer would have been in accordance with, and pursuant to, terms of the collective bargaining agreement. The claimant had worked as a laborer prior to becoming an electrician helper. The claimant did not accept the transfer because he hoped to locate other employment in the electrical field. He is neither an electrician

nor an apprentice electrician. He wants ultimately to become an electrician and make it his life's work. He was taking electrical classes at night school to further this goal and has since applied for admittance to the apprenticeship program. Had he accepted the laborer's position, he thought he might forget some of the things he had learned.

Although he had no prospects of immediate employment elsewhere, the claimant thought that he could find electrical work to do if he chose a layoff. Following his layoff, he was successful in finding three temporary part-time jobs doing electrical work for short periods in November and December 1970 earning $3.25 an hour, $3.37 an hour, and $5 an hour.

The claimant was one of 11 electrician helpers laid off. He was number one on the recall list at the time of layoff. He therefore knew that when the employer recalled workers in the claimant's classification, he would be the first recalled.

REASONS FOR DECISION

Section 1256 of the code provides that an individual is disqualified for benefits, and sections 1030 and 1032 of the code provide that the employer's reserve account may be relieved of benefit charges, if the claimant left his most recent work voluntarily without good cause.

A claimant who has elected to give up employment rather than accept a reclassification or transfer to another position which the claimant is equipped to perform because of such matters as experience, training or education with the same employer must be deemed to have voluntarily left his work rather than to have refused an offer of new work. Since the claimant herein rejected an offer of transfer to such a position, the matter becomes one of a voluntary leaving and the issue of good cause is before us.

Good cause for the voluntary leaving of work exists where the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

Good cause for leaving work must necessarily be judged as of the time of leaving.

In Appeals Board Decision No. P-B-124, we held that good cause existed for leaving employment rather than accepting a transfer, where the transfer would have resulted in a wage reduction of 20.96 percent. Such a reduction is sufficiently substantial, in and of itself, so that a reasonable person genuinely desirous of retaining employment would choose unemployment rather than the wage reduction.

Johnson, et al. v. State of California, et al. (1970), Court of Appeal, Second Appellate District, Division One (Civil No. 36540), an unreported decision, dealt with a factual situation similar to the instant case.

As we read the Johnson decision, the court, citing Bunny's Waffle Shop v. California Employment Commission (1944), 24 C. 2d 735, 151 P. 2d 224, which involved a 25 percent reduction in wages, concluded that a wage reduction, if sufficiently substantial (e.g. 25 percent) would, in and of itself, constitute good cause for leaving work. The court then proceeded to consider the wage reductions in the case of 15.4 percent and 17.5 percent along with other factors to find good cause. The other factors examined by the court in finding good cause were:

(1) The comparative skills of the two jobs;

(2) Whether the employee had ever worked in the department to which he was being transferred;

(3) The length of time he had worked in the job from which he was being transferred; and

(4) Whether the employee had a reasonable belief that he would be recalled to the job from which he was being transferred in a reasonably short period of time.

We interpret this approach to mean that the court in the Johnson case did not believe that reductions in pay of 15.4 percent and 17.5 percent were sufficiently substantial, in and of themselves; therefore, other factors, in combination with the wage reduction, had to be considered in determining whether or not good cause existed for leaving work.

The approach of the Johnson decision was precisely that followed by the majority of this board in Appeals Board Decision No. P-B-88. There it was held that one must examine all the factors involved in addition to a wage reduction. There, a wage reduction of 11.2 percent alone was insufficient to form the basis for a finding of good cause for leaving work, and therefore consideration had to be given to the other factors involved. These other factors were:

(1) The claimant's prospects for securing other employment at a wage commensurate with his prior earnings;

(2) Whether the claimant was aware of the labor market as it affected him;

(3) The comparative skills required;

(4) Substantial prospects of other employment based upon objective facts known at the time of election;

(5) The distance and cost of commuting;

(6) Any loss of seniority and recall rights; and

(7) Opportunities for advancement in the lower classification.

Another matter which we deem important in cases like the present is whether the transfer being offered is made pursuant to, and in accordance with, the provisions of a collective bargaining agreement. Seniority "bumping" rights such as those concerned herein afford senior covered employees some degree of economic security. Accordingly, it would be incumbent upon such an employee to accept the transfer to avoid a

finding of a lack of good cause for leaving work unless conclusions reached regarding factors, as listed above, clearly call for an opposite finding.

A study of the pertinent factors in the instant case leads us to a finding that the claimant herein did not have good cause to leave his employment on October 31, 1971.

First of all, we cannot find that a reduction in pay of 10.54 percent is a sufficiently substantial reduction in pay, in and of itself, to form the basis for a finding that the claimant had good cause to leave his work. (Appeals Board Decision No. P-B-88)

Looking at the factors considered important by the court in the Johnson case, we do not believe that the classification of an electrician helper which is below that of apprentice involves any significant or substantial skills. The claimant herein had only a year and a half in this entry level job and, although he was attending classes, he had not yet become an apprentice. Inasmuch as he asserted that he believed he would shortly be recalled, it is apparent he would have lost no appreciable amount of skill in the electrician helper category by taking the laborer's job in the interim. At least he could have remained steadily employed at a very respectable wage. The claimant previously had also worked as a laborer.

Regarding factors listed in Appeals Board Decision No. P-B-88, the claimant admittedly had no knowledge of any openings for employment elsewhere when he elected layoff. He knew that there were ten other electrician helpers who had also been laid off by the employer and that he would necessarily be competing with some of them as well as others in seeking work in a depressed labor market. His limited skills in electrical work could furnish no foundation for a reasonable belief that he could secure work in a depressed labor market within his preferred field. Indeed, his three short-term temporary jobs while unemployed merely served to prove the point that there was little work he could hope for when he elected layoff. The claimant's failure to better familiarize himself with the depressed labor market cannot aid him.

The offer of transfer was in accord with the collective bargaining agreement and we conclude from an examination of all the factors involved that a reasonable person genuinely interested in retaining employment would have elected the downgrade rather than become unemployed. We accordingly conclude that the claimant did not have good cause to refuse the transfer and therefore is disqualified for benefits under section 1256 of the code.

DECISION

The decision of the referee is reversed. The claimant is disqualified for benefits under section 1256 of the code. The employer's reserve account is relieved of benefit charges under section 1032 of the code.

Sacramento, California, February 3, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

CLAUDE MINARD

JOHN B. WEISS

CARL A. BRITSCHGI

CONCURRING - Written Opinion Attached

DON BLEWETT

CONCURRING OPINION

I do not construe the decision in Johnson as standing for the proposition that reductions in pay of 15.4 percent and 17.5 percent are not sufficiently substantial, in and of themselves, to constitute good cause for leaving work.

In my opinion the court in Johnson simply looked to other factors as constituting additional reasons for concluding that the claimants had good cause for leaving work. It is not unusual for a court to give additional reasons in support of its decision even though the case may have been decided upon a single fact or principle of law.

DON BLEWETT